



उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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मामला क्रमांक C.A. No. 428/01 /सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<u>APPELLANT</u> Vinod Kumar @ Amarnath, S/o Janaklal, Caste Satnami, aged 20 years, R/o village Pachbahra, Chirdapara, Police Station Thakatpur, District Bilaspur. -Versus- <u>RESPONDENT</u> State of Chhattisgarh, Though Police Station Thakatpur, District Bilaspur. (Appeal under Section 374 (2) of the Cr.P.C.) <u>Division Bench :</u> <u>Hon'ble Shri L.C. Bhadoo &</u> <u>Hon'ble Shri Dharendra Mishra, JJ</u> <u>25-6-2007</u> Shri Hemant Kesharwani, counsel for the appellant. Shri Akhil Mishra, Panel Lawyer for the State. Oral judgment dictated on <i>Dais</i>. <u>L.C. Bhadoo, J.</u> The accused/appellant has preferred this appeal against the judgment of conviction and order of sentence dated 17-1-2001 passed by the VIth Additional Sessions Judge, Bilaspur, in Sessions Trial No.238/2000 whereby he has been held guilty for commission of offence under Sections 449, 397 & 302 of the Indian Penal Code and sentenced him to undergo R.I. for 10 years & to pay a fine of Rs.1,000/-, to undergo R.I. for 7 years & to pay a fine of Rs.1,000/- and to undergo imprisonment for life & to pay a fine of Rs.1,000/-, respectively and in default of payment of fine under each head to further undergo imprisonment for six months.	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	2) The case of the prosecution, in brief, is that on 27-3-2000 Punav Ram lodged a report in Police Station Thakatpur to the effect that at about 2.00 p.m. he returned from his field, heard the cries of the wife of Badri, went to the house of Badri and saw that his wife Prithvi & son Gorelal were present. The accused was standing at the gate of the house of Badri holding knife in his hand. Seeing this he went to the house of Tikaram, Sarpanch, to call him, but he was not at his residence, therefore, he called Mathura Prasad, Upsarpanch. On return, he came to know that the daughter of Badri has been murdered and the accused ran away. Receiving this report, Station House Officer, Police Station Thakatpur registered First Information Report (Ex.P/10). Merg intimation (Ex.P/11) was also given by Punav Ram. The Investigating Officer left for the scene of occurrence. After giving notice (Ex.P/2) to the Panchas, prepared inquest (Ex.P/3) on the body of deceased Raj Kumari. The Investigating Officer seized blood stained & plain soil from the place of occurrence under Ex.P/4. One broken tin box was seized from the place of occurrence under Ex.P/5. Broken lock of the house of Shail Kumari was seized under Ex.P/6. Full pant of the accused was seized under Ex.P/7. Site plan (Ex.P/8) was prepared by the Investigating Officer. The accused while in the Police custody gave memorandum (Ex.P/1). In pursuance of that, a Tabli was seized under Ex.P/9. The Investigating Officer gave a letter of request (Ex.P/12) to the Assistant Surgeon for medical examination of Sahil Kumari in respect of the injuries sustained on her neck. The body of Raj Kumari was sent for postmortem examination to Government Hospital, Thakatpur vide Ex.P/13 where Dr. R.K. Agrawal conducted postmortem and prepared report (Ex.P/23). Doctor opined that the cause death was by shock due to excessive hemorrhage from injury No.1.	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	The death was homicidal in nature. Tabli in question was sent to the Doctor under Ex.P/14 for examination. Doctor opined that the injury found on the body of Raj Kumari could be caused by Tabli in question. The recovered articles were sent for medical examination to the Forensic Science Laboratory, Bilaspur, from where the report (Ex.P/21) was received. 3) After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Bilaspur, who in turn committed the case to the Court of Sessions Judge, Bilaspur, from where learned VIth Additional Sessions Judge, Bilaspur, received the same on transfer for trial. 4) In order to establish the charge against the accused/appellant, the prosecution examined 11 witnesses. Statement of the accused was recorded under Section 313 of the Code of Criminal Procedure in which he denied the material appearing against him in the prosecution evidence. 5) Learned Additional Sessions Judge after hearing counsel for the respective parties, convicted and sentenced the accused/appellant as aforementioned. 6) We have heard learned counsel for both the parties. 7) Shri Kesharwani, learned counsel for the accused/appellant, has not disputed the homicidal death of Raj Kumari. Even counsel for the accused has admitted the postmortem report before the trial Court; therefore, the Doctor has not been examined. It has been mentioned in the report that death of Raj Kumari was homicidal in nature. 8) Shail Kumari (PW-4) has stated that on the fateful day at about 2.00 p.m. after locking the room and providing food to her five years daughter, she	

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आदेश पत्रक (पूर्वानुबद्ध)

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	left her in the parchi. When after an hour she returned back, she saw that the lock of the room was broken. Her daughter was not in the parchi. The bowl of the rice was lying in the parchi. When she tried to go inside the room, the accused caught her from neck and pushed her. The accused was holding the knife, on which she raised cries, hearing her cries Punav Ram & Prithvi came. Punav Ram (PW-1) & Prithvi (PW-2) have also stated that the accused was standing there. Therefore, in view of the above evidence and medical report in which the doctor has mentioned about the injuries, we are of the considered opinion that the death of Raj Kumari was homicidal in nature. 9) As far as involvement of the accused in the crime in question is concerned, learned counsel for the accused/appellant argued that in this case, there is no evidence to connect the accused with the murder of Raj Kumari, as no prosecution witnesses, in fact, saw the accused while attacking Raj Kumari. He further argued that they have simply stated that the accused was standing there. There was animosity between the accused and the husband of Shail Kumari (mother of the deceased), the accused has been falsely implicated in the crime in question. 10) On the other hand, Shri Mishra, learned Panel Lawyer for the State, supported the judgment of trial Court. 11) In order to appreciate the arguments, we have perused the evidence of Shail Kumari (PW-4), mother of the deceased, she has stated that at about 2.00 p.m. she left house after locking the room and leaving her daughter in the parchi after providing her rice in the bowl, when after an hour she returned back, her daughter was not in the parchi whereas, the rice bowl was	

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आदेश पत्रक (पूर्वानुबद्ध)

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	lying there and the accused was standing at the gate. The lock of the room was broken, when she tried to go inside the room, the accused caught her from the neck and pushed her. Thereafter she raised cries, on which Punav Ram (PW-1) & Prithvi (PW-2) came on the scene. The accused broke open the lock of tin box and took out cash amount of Rs.264/-. He was saying that he has mortgaged this house for a consideration of Rs.13,000/-. He was further saying that it is his house, therefore, he will not allow her to go inside the room. When accused ran away, she entered the house and saw that her daughter was lying dead in the room and blood was oozing out from the injuries. 12) Punav Ram (PW-1) has corroborated the evidence of this witness to the extent that after returning from the field he was taking his meal, at that time he heard the cries of the wife of Badri, therefore, he went towards the house of Badri, he saw that accused was coming out of the house and was standing at the gate, thereafter he went to inform the matter to Sarpanch, but he was not at his residence, therefore, he brought Up-sarpanch & Kotwar Ramavatar. By that time, the accused already ran away after committing theft. When they reached they saw Raj Kumari in the house, there were injuries on her neck. He lodged the report in the Police Station. Prithvi (PW-2), wife of Punav Ram, has also corroborated the evidence of Shail Kumari (PW-4). Punav Ram (PW-1), in cross-examination, has stated that it is incorrect to say that he is implicating the accused in a false case. The accused is his grandson, therefore, there is no question of his implication in a false case. Mani Bai (PW-3) has also stated that she went to the house of Shail Kumari and saw that the accused broke open the tin box, she along with Shail Kumari & Prithvi was standing towards her house. The courtyard	

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आदेश पत्रक (पूर्वानुबद्ध)

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	of her house and Shail Kumari was common. The accused took out the money from the box. 13) From the evidence of all these four witnesses, the presence of the accused on the scene of occurrence is established. The house was locked by Shail Kumari when she left the house. When she returned after an hour, she saw that the lock was broken, accused was standing at the gate, her daughter was not in the parchi, accused broke open the box & took money from the box. Moreover, the accused was saying that he will not allow her to go inside the room, the house belongs to him. He has mortgaged the same for a consideration of Rs.13000/- . The weapon of offence (Tabli) was recovered at the instance of the accused from the house of Badri. As per the FSL report, the blood was found on the weapon of offence (Tabli) as well as on the full pant of the accused. The accused has simply denied the prosecution evidence and has stated that he has been falsely implicated in the crime in question on account of animosity. There is no explanation on behalf of the accused that how he was present there, how Raj Kumari was murdered and he has not explained the circumstances under which Raj Kumari sustained the fatal injuries. Moreover, Punav Ram (PW-1), who is grand-father of the accused has stated that being grand-son there is no question of false implication of the accused that too in a murder case. When accused was present there, as per the provisions of Section 106 of the Evidence Act, the burden was on the accused to explain the circumstances under which the lock of the house was broken, the injuries sustained by Raj Kumari and the box was broke open by him, therefore, this is an additional circumstance against the accused. All these circumstantial evidence and the conduct of the accused establish the involvement of the accused in the crime	

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	in question because when Shail Kumari left the house, deceased Raj Kumari was in the parchi, house was locked and she returned back within an hour, at that time the accused was standing there, lock was broke open and Raj Kumari was murdered inside the room. Therefore, from the above circumstantial evidence, it is established that accused was the author of the crime in question and there is no possibility of any other person committing the crime because committing the theft and breaking of the box was seen by the witnesses, therefore, the conviction of the accused under Section 302 of the Indian Penal Code for committing the murder of Raj Kumari is based on legal evidence and we do not find any illegality or infirmity in the judgment of the trial Court to that extent. 14) As far as the conviction under Section 449 of the Indian Penal Code is concerned, the accused trespassed the house of Shail Kumari after breaking the lock and committed the murder of Raj Kumari, therefore, his conviction under Section 449 of the Indian Penal Code is also established, which does not require any interference by this Court. 15) As far as the conviction under Section 397 of the Indian Penal Code is concerned, Section 397 of the IPC is not a substantive offence, but it prescribes the minimum sentence which envisages that if any accused while committing robbery or dacoity, uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, in that circumstances the accused is liable to be punished not less than 7 years. The accused has already been sentenced to undergo imprisonment for life for committing offence under Section 302 of the Indian	

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	Penal Code, therefore, the conviction under Section 397 of the Indian Penal Code is not sustainable. 16) In view of the above, the appeal of the appellant is partly succeeds. The conviction and sentence imposed upon the accused under Section 397 of the Indian Penal Code are set aside and he is acquitted of that charge, however, his conviction and sentence under Sections 449 & 302 of the Indian Penal Code are maintained. Sd/- L.C. Bhadoo Judge	Sd/- Dhirendra Mishra Judge

Jasr